

CHAPTER 809. CHILD CARE SERVICES

ADOPTED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.

ON **JANUARY 27, 2015**, THE TEXAS WORKFORCE COMMISSION ADOPTED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated date of publication in the *Texas Register*: **February 13, 2015**

The rules will take effect: **February 16, 2015**

The Texas Workforce Commission (Commission) adopts amendments to the following sections of Chapter 809, relating to Child Care Services, *without* changes, as published in the October 24, 2014, issue of the *Texas Register* (39 TexReg 8361):

Subchapter A. General Provisions, §809.2

Subchapter B. General Management, §809.16 and §809.20

The Commission adopts the following sections to new Subchapter G of Chapter 809, relating to Child Care Services, *without* changes, as published in the October 24, 2014, issue of the *Texas Register* (39 TexReg 8361):

Subchapter G. Texas Rising Star Program, §§809.130, 809.134, and 809.135

The Commission adopts the following sections to new Subchapter G of Chapter 809, relating to Child Care Services, *with* changes, as published in the October 24, 2014, issue of the *Texas Register* (39 TexReg 8361):

Subchapter G. Texas Rising Star Program, §§809.131 - 809.133

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 809 rule change is to establish rules to administer the Texas Rising Star (TRS) program pursuant to Texas Government Code §2308.3155.

Texas Government Code §2308.3155 defines the TRS program as "a voluntary, quality-based child care rating system of child care providers participating in the Texas Workforce Commission's subsidized child care program."

Effective September 1, 2013, House Bill 376 (HB 376), 83rd Texas Legislature (Regular Session), amended Chapter 2308 of the Texas Government Code relating to the TRS program. As amended, Chapter 2308 required the Commission to:

- create a TRS program review workgroup to recommend revisions to the TRS program;
- adopt rules that incorporate the TRS workgroup's recommended revisions;
- establish graduated reimbursement rates for TRS providers;
- require Local Workforce Development Boards (Boards) to use at least 2 percent of their annual allocations for quality child care initiatives; and
- make funds available for Boards to hire TRS assessors and mentors to provide TRS program technical assistance to child care providers.

TRS Program Review Workgroup

Pursuant to Texas Government Code §2308.321, the TRS workgroup was appointed by the Agency's executive director and included representatives from the following organizations:

- Texas Workforce Commission (one representative)
- Texas Department of Family and Protective Services (DFPS) (one representative)
- Texas Education Agency (one representative)
- Texas Early Learning Council (TELC) (one representative)
- TRS program providers (four representatives)
- Texas School Ready! (TSR!) project participant (one representative)
- Boards (one representative)
- Board staff (three representatives)

The TRS workgroup invited stakeholders from around the state of Texas to participate in workgroup discussions and provide input into proposed TRS program revisions. Stakeholders included individuals from the following entities:

- Boards
- Board child care contractors
- Child care providers
- Children's Learning Institute (CLI)
- Texas Head Start Collaboration Office
- Texans Care for Children
- Texas Association for the Education of Young Children
- Texas Association for Infant Mental Health
- Texas Licensed Child Care Association
- Texas Partnership for Out of School Time
- Texas Department of State Health Services

Pursuant to Texas Government Code §2308.321, certain factors had to be taken into consideration by the TRS workgroup when making recommendations:

- Professional development standards for child care directors and employees, including training and annual professional development requirements;
- Education and experience requirements for assessors and mentors;
- Early learning and school readiness standards;
- Guidelines for infants and toddlers in child care;
- Training hours for providers;

- Playground standards;
- Best practices guidelines based on standards adopted by nationally recognized organizations, including Head Start Program Performance Standards, National Health and Safety Performance Standards, National Association for the Education of Young Children program standards and accreditation criteria, National Association for Family Child Care standards, US Department of Defense standards, national accreditation standards, and TSR! certification standards;
- Research on infant and toddler brain development; and
- Strategies for long-term financing of the TRS program, including financing the payment of:
 - incentives to child care providers participating in the TRS program; and
 - grants and rewards to child care providers that achieve and maintain high levels of service.

The TRS workgroup also considered the work of TELC, specifically its:

- Texas Quality Rating and Improvement System recommendations;
- Infant, Toddler, and Three-Year-Old Early Learning Guidelines; and
- Texas Core Competencies for Early Practitioners and Administrators.

The TRS workgroup addressed the following topics:

- Minimum licensing standards for TRS providers;
- Structure and scoring of TRS program standards;
- Minimum criteria for assessing and monitoring providers on the TRS program standards, including TRS providers that move or expand locations;
- Assessments and monitoring for nationally accredited facilities and facilities regulated by the US Military;
- Process for providers to request reconsiderations of their TRS program assessment; and
- Recommendations regarding long-term financing of the TRS program.

Graduated Reimbursement Rates for TRS Program Providers

Texas Government Code §2308.315 mandates that the minimum reimbursement rate for a TRS provider must be greater than the maximum rate established for a provider that is not TRS certified for the same category of care, i.e., at least:

- 5 percent higher for a provider with a 2-star rating;
- 7 percent higher for a provider with a 3-star rating; and
- 9 percent higher for a provider with a 4-star rating.

Funding for Quality Child Care Initiatives and TRS Program Assessors and Mentors

Texas Government Code, Chapter 2308, further requires that:

- Boards use at least 2 percent of their annual allocations for quality child care initiatives, as set forth in §2308.317(c); and
- the Commission makes funds available for Boards to hire TRS assessors and mentors to provide TRS program technical assistance to child care providers, per §2308.3155(c).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§809.2. Definitions

New §809.2(21) adds the definition of the TRS program as a voluntary, quality-based child care rating system for child care providers participating in Commission-subsidized child care, as set out in Texas Government Code §2308.3155.

New §809.2(22) defines a TRS provider as a provider certified as meeting TRS program standards. The definition specifies that a TRS provider is certified as one of the following:

- (A) 2-Star Program Provider;
- (B) 3-Star Program Provider; or
- (C) 4-Star Program Provider.

The two definitions are provided to distinguish between the TRS program and a TRS provider as these terms are used throughout the rule. The levels of certification are consistent with levels of reimbursement specified in Texas Government Code §2308.315.

Certain paragraphs have been renumbered to reflect additions.

Comment:

One commenter requested that this section include definitions for the TRS program measures listed in §809.130(d)(1)(A) - (E), specifically, "director and staff qualifications and training," "caregiver-child interactions," "curriculum," "nutrition and indoor and outdoor activities," and "parent involvement and education."

Response:

The Commission does not believe a definition for each category is necessary in rule language. These quality indicator categories and the specific criteria and measures associated with these categories are provided in more detail in the TRS guidelines.

Comment:

One commenter disagreed with the definition of the TRS program that limits the participation in the program to child care providers participating in Commission-subsidized child care. The commenter suggested that the Commission should follow the recommendation in the Child Care and Development Block Grant Act of 2014 (CCDBG Act), which allows all providers to participate in the state Quality Rating and Improvement System (QRIS).

Response:

Although the CCDBG Act does not limit QRIS participation to subsidized providers, Texas Government Code §2308.3155 limits the TRS program to child care providers participating in the Agency's subsidized child care program.

SUBCHAPTER B. GENERAL MANAGEMENT

The Commission adopts the following amendments to Subchapter B:

§809.16. Quality Improvement Activities

Section 809.16 removes subsections (d) and (e) relating to assessments for providers requesting to participate in the TRS program. These provisions have been modified and moved to new §809.133(b) relating to application and assessments for the TRS program.

The Commission did not receive comments on this section.

§809.20. Maximum Provider Reimbursement Rates

Section 809.20(b)(1) relating to enhanced reimbursement rates for TRS providers is amended to align the language with the new definition in §809.2(22).

Section 809.20(c) incorporates the requirement in Texas Government Code §2308.315 that TRS providers receive reimbursements that are higher than the maximum rates for non-TRS providers and that these rates shall be at least:

- (A) 5 percent greater for a 2-Star Program Provider or a child care provider meeting the requirements of §809.20(b)(2) or (b)(3);
- (B) 7 percent greater for a 3-Star Program Provider; and
- (C) 9 percent greater for a 4-Star Program Provider.

Texas Government Code §2308.315 requires that graduated reimbursement rates not go into effect before the Commission adopts revisions to the TRS program rules. However, following the adoption of the TRS program rules, sufficient time is needed to:

- train TRS assessors and mentors on the new TRS guidelines; and
- conduct assessments of current TRS providers to ensure they meet the requirements necessary to be reimbursed at the levels prescribed in Texas Government Code §2308.315.

The Agency surveyed Boards, and a majority indicated that they would be able to conduct all assessments of current TRS providers within five months following the adoption of the TRS program rules. Additionally, the Agency received stakeholder input regarding training of new TRS assessors. Based on this input, the Agency has determined that although the training of new TRS assessors can occur concurrently with assessments of current TRS providers, such training will extend an additional two to three months beyond the shared five-month period.

Therefore, to ensure that the TRS program can be administered as set forth in Texas Government Code, Chapter 2308, including required technical assistance and incorporation of higher quality-based standards, the new graduated reimbursement rates in §809.20(c) will be implemented effective September 1, 2015.

Further, to expand local flexibility, the Commission adds new §809.20(d) to allow Boards to establish a higher enhanced reimbursement rate for TRS providers than those provided in §809.20(c)(1) - (3), so long as a minimum 2 percent difference between each star level is maintained, consistent with Texas Government Code §2308.315.

Certain subsections have been relettered to reflect additions.

Comment:

Two commenters expressed support for the enhanced reimbursement rates specified in this section.

Comment:

One commenter asked if Boards will be given additional funding or a reduction in the number of children to be served in Board Contract Year 2016 (BCY'16) to compensate for the TRS rate increases required in this section.

Response:

The ability to fund the prescribed rate increases was built into the performance target methodology as part of the fiscal impact analysis for HB 376. The Texas legislature reduced the performance target for the number of children served to allow for general increases in providers' rates as well as graduated TRS rates.

Comment:

One commenter asked if a Board must request Commission approval to have enhanced rates above the minimum requirements of 5 percent, 7 percent, and 9 percent.

Response:

Given that the TRS percentage amounts are prescribed in statute and in rule, Boards will not be required to seek additional approval to establish rates at the TRS minimum percentages. Agency policy requires Boards to receive Agency approval for reimbursement rate increases. Consistent with long-standing Agency policy, prior Agency approval is required when a Board intends to increase:
--rates above the statutory and rule minimum requirements; or
--regular rates at the same time the TRS enhanced rates become effective.

Comment:

One commenter requested confirmation that the implementation date of the graduated rates is September 1, 2015, which is the last month of BCY'15.

Response:

The Commission confirms that, as set out in §809.20(c) of these rules, the effective date of the enhanced rates will be September 1, 2015. This is the first month of the state fiscal year and aligns with the fiscal analysis for HB 376.

Comment:

One commenter requested that Boards be allowed to set rates for nationally accredited providers at a higher reimbursement rate than the 4-Star TRS providers.

Response:

The authority for increased reimbursement rates established in Texas Government Code §2308.315(a) is based upon participation in the TRS Program. Section 2308.315

prescribes that the rate "must be at least five percent higher for a provider with a two-star rating; at least seven percent higher for a provider with a three-star rating; and at least nine percent higher for a provider with a four-star rating." In establishing minimum percentages for TRS Program participants, the statutory language allows rates to be set higher than the minimum percentages. However, statute conditions such higher reimbursement upon participation in the TRS Program and directs Boards to establish graduated reimbursement rates for child care "based on the commission's Texas Rising Star Program."

Likewise, the current rule language requiring at least a 5 percent increase for preschool children at non-TRS program providers that obtain school readiness certification and participate in school readiness models is also based on legislative guidance. The Texas legislature, through the General Appropriations Act, has directed the Commission to provide funds to child care providers participating in school readiness models. The enhanced rates for these providers set forth in §809.20(b)(2) - (3) reflect this legislative direction and do not exceed the TRS rates set forth in state statute or in Commission rule.

Accordingly, there is no statutory or legislative basis for establishing higher reimbursement rates based solely on a provider's national accreditation status. Section 2308.315(b) of the Texas Government Code expressly provides that the minimum reimbursement rate for a TRS provider must be greater than the maximum rate established for a non-TRS provider. Thus, in order for a nationally accredited provider to qualify for higher reimbursement rates, that provider must participate in the TRS program.

In adopting HB 376--codified in Texas Government Code §2308.321(e)(7)--the legislature addressed the inclusion of national accreditation standards as part of the TRS program by directing the TRS workgroup to consider the following in making TRS program recommendations:

- Best practices guidelines are based on standards adopted by nationally recognized organizations, including:
- Head Start Program performance standards
 - National health and safety performance standards
 - National Association for the Education of Young Children program standards and accreditation criteria
 - National Association for Family Child Care standards
 - US Department of Defense standards
 - National accreditation standards; and
 - TSR! certification standards.

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

The Commission adopts new Subchapter G, as follows:

§809.130. Short Title and Purpose

New §809.130(a) identifies rules contained in this subchapter as the TRS Program rules.

New §809.130(b) sets forth the purpose of the TRS Program rules. Specifically, the purpose of the TRS Program rules is to interpret and implement Texas Government Code §2308.3155(b) requiring the Commission to establish rules to administer the TRS program, including guidelines for rating a child care provider for TRS program certification.

New §809.130(c) states that the TRS Program rules identify the organizational structure and categories of, and the scoring factors that shall be included in, the TRS guidelines.

Pursuant to §2308.3155(b) of the Texas Government Code, new §809.130(d) establishes that the guidelines for rating a child care provider are included in the TRS guidelines.

New §809.130(d) outlines the topics to be covered in the TRS guidelines, requiring the TRS guidelines to:

- (1) describe measures for the TRS program that contain, at a minimum, measures for child care providers regarding:
 - (A) director and staff qualifications and training;
 - (B) caregiver-child interactions;
 - (C) curriculum;
 - (D) nutrition and indoor and outdoor activities; and
 - (E) parent involvement and education;
- (2) specify measures that:
 - (A) must be met in order for a provider to be certified at each star level; and
 - (B) are observed and have points awarded through on-site assessments; and
- (3) specify the scoring methodology and scoring thresholds for each star level.

New §809.130(e) requires:

- (1) the Commission to adopt the TRS guidelines per the requirements of the Texas Open Meetings Act; and
- (2) any amendments to the TRS guidelines made by the Commission to be subject to the requirements of the Texas Open Meetings Act.

The TRS guidelines take into consideration the recommendations of the TRS workgroup and were made available for public comment in fall 2014, prior to final adoption by the Commission.

Comment:

One commenter suggested the development of TRS program goals, as there are currently none listed in the proposed rules or guidelines, or on the website.

Response:

The Commission provides program goals for the child care services program, including the TRS program, in the Child Care and Development Fund (CCDF) State Plan, which is posted on the Agency's website.

Further, the Texas Sunset Commission's preliminary recommendations include potential legislative direction related to the goals and outcomes for the Commission's child care services program, specifically:

- parents' employment stability;
- parents' wages; and
- the stability of child care arrangements.

Based on these recommendations, the Commission will enhance the child care program's goals as they relate to parent employment outcomes and the stability of the child care arrangements.

Comment:

One commenter recommended a review of a child care center's assessment tools and procedures for students to ensure that centers are monitoring both the program and children's progress. The commenter stated that most QRIS have this as an element.

Response:

The TRS workgroup extensively discussed this issue and acknowledged the value of a child care provider's regular assessments of a child's progress and development. The proposed TRS program standards include a measure that encourages providers to hold parent conferences during which the child's progress and overall development are discussed. However, the workgroup did not recommend reviewing the specific tools a provider uses to assess a child's developmental progress. The workgroup believes it may be appropriate to revisit the issue during subsequent reviews or revisions of the TRS program standards.

Comment:

One commenter stated that caregiver-child interactions are difficult to measure. While one can assess interactions during a visit, which certainly could be skewed due to an assessor's presence, it is difficult to draw a conclusion about a center's quality based on a one-time observation. The commenter also recommended changing "Child-Caregiver Interactions" to "Supervision," to align with national best practice and allow for a more objective measure.

Response:

The Agency is working closely with CLI to develop tools and training that will assist assessors in conducting observations that will result in a valid and reliable assessment of the facility.

Regarding the use of supervision rather than child-caregiver interactions, a review of TELC's recommendations, the National Compendium of QRIS, as well as the Environment Rating Scale and CLASS (Classroom Assessment Scoring System) measures, show that each of these standards emphasizes interactions. Supervision as a quality indicator is not included in these standards. Child-caregiver interaction is a more appropriate description of this category because it denotes quality and nurturing

measures. Supervision, on the other hand, denotes safety, which is primarily a licensing function.

Comment:

The Commission received two comments requesting separate measures for group sizes and child-caregiver interactions. One of the commenters stated that ratios and group sizes should not be a subset of child-caregiver interactions; rather, it should actually be the reverse.

Response:

The TRS workgroup's and TELC's recommendations consider group size as a structural foundation for higher-level child-caregiver interactions. Thus, following the recommendations of these groups, the TRS Program rules and guidelines contain group size as a structural measure and child-caregiver interactions as a higher-level process measure.

Comment:

The five core measures that the Agency lists include both structural and process measures. While staff qualifications are listed as both structural and process measures, ratios are listed only as a process measure. However, the Agency was directed to review TELC's work, and TELC categorizes ratios and group sizes as a structural measure.

Response:

HB 376 instructed the TRS workgroup to consider (among other things) TELC's work. The TRS workgroup reviewed TELC's work and agreed with the general framework as recommended by TELC to include structural measures for 2-star levels and process measures for the higher levels.

The workgroup also considered TELC's recommendation to include ratios as a structural measure but decided not to include ratios as a required measure in order to be a 2-star provider. Instead, the workgroup recommended focusing on child-caregiver interactions as these measures may be more indicative of a child-focused quality system. The workgroup, however, did recommend including group size as a structural measure at the 2-star level.

Comment:

One commenter requested that reduced ratios become a requirement for participation in the TRS program. The commenter stated that the QRIS Network, a national organization that reviews other states' systems, reports that states that have unfavorable ratios and group sizes in licensing standards often include ratios and group sizes in their QRIS standards. Texas should follow the lead of other states with high ratios and group sizes that have made improved ratios and group sizes mandatory in their QRIS.

The commenter acknowledged that quality improvements have financial impacts on providers. But the fact is that most providers in the subsidy system take just a few subsidized children, and most ensure that this population makes up less than 25 percent

of a center's total enrollment. Improved ratios and group sizes should be manageable, especially given the rate increase that accompanies a TRS designation. Most importantly, this is a voluntary system. If the state wants to make meaningful improvements in this key component of quality, it should mirror best practice and make reasonable ratios mandatory.

A provider with minimum standards for ratios and group sizes should not be awarded four stars; the commenter stated that the early childhood community would not agree that a center with 15 three-year-olds to one caregiver is the highest quality classroom we have in Texas. Texas should not put our 4-star logo on a center like this, as it does not truly reflect top quality.

Response:

The TRS workgroup carefully considered including staff ratios as a required measure for a 2-star provider; however, the workgroup recommended focusing on "Child-Caregiver Interactions," as these measures are more indicative of a child-focused quality system.

The Commission notes that in order to receive 4-star certification, the provider must meet the 2-star group size requirement, which is above minimum licensing standards.

Comment:

One commenter requested that the Commission consider phasing in mandatory participation in the TRS program for subsidy providers. The intent of HB 376 was to incentivize participation in the TRS program and to improve quality. One way that many other states with a QRIS are approaching this is to require licensed centers that accept subsidized children to participate in the state's QRIS and to phase in this requirement over time. The new CCDF rules from the federal government also require states to do more to monitor and encourage quality improvements.

Since the federal government is providing funds to put at-risk children in high quality child care settings, the Agency can help meet this goal by ensuring that providers that accept these children have some level of oversight and quality, even if it is only at the 2-star level. And, with the new technical assistance teams at the Boards, centers should be able to get the help they need to raise quality, and will get the added benefit of the increased reimbursement rates.

Response:

The TRS workgroup considered this requirement. However, under current CCDF regulations, the parent must be given the choice of center and home-based care and any restrictions on the choice must ensure that there are sufficient providers available to the parent. Placing the requirement to be TRS certified in order to care for subsidized children at this time would limit the choice of providers for parents.

The Commission believes that parent and consumer education on the importance of quality child care is critical in informing and encouraging parents to choose quality care. In implementing the new TRS program standards, the Agency will provide parent

education materials and information on the Agency website regarding TRS standards and the importance of choosing quality care.

§809.131. Eligibility for the TRS Program

Texas Government Code §2308.3155 establishes the TRS program as a voluntary, quality-based child care rating system of child care providers participating in the Commission-subsidized child care program. To be eligible to participate in the TRS program, a child care provider must have a current agreement to accept Commission-subsidized children. Based on recommendations proposed by the TRS review workgroup per Texas Government Code §2308.321, the Commission is revising the standards for eligibility for the TRS program, including addressing compliance with the licensing standards established by DFPS. Additionally, as a result of comments identifying compliance with Board and Commission standards as a factor when determining eligibility for increased reimbursement rates, the Commission is also revising TRS eligibility standards to clarify that compliance with Board and Commission standards are equally as important in establishing initial program eligibility for TRS.

As a quality-based rating system, the TRS program represents standards above the minimum licensing standards established by DFPS, the child care licensing and regulatory agency for the State of Texas. As set forth in Human Resources Code §42.042, DFPS regulations establish minimum requirements applicable to all child care providers. Because certification within the TRS program represents achievement of higher, quality-oriented standards in order for a provider to initially meet TRS program standards, the provider must demonstrate consistent compliance with minimum DFPS standards. Establishing consistent compliance with minimum DFPS standards was a threshold recommendation of the TRS workgroup.

Accordingly, as set forth in new §809.131, providers placed on corrective or adverse action by DFPS are automatically determined to have failed to demonstrate consistent compliance with minimum licensing standards and, therefore, are not eligible to participate in the TRS program. The Commission notes that being placed on corrective or adverse action by DFPS is the end result of a legal process enforcing minimum licensing regulatory requirements, including a provider's right to appeal, and could result from a variety of situations. For example, if a child care provider has repeated licensing deficiencies, DFPS may place the provider on corrective action. DFPS may initiate an adverse action to include a revocation or suspension of a license if:

- deficiencies are not corrected timely;
- there are repeat deficiencies; or
- there is an incident or single deficiency that poses an immediate risk to children.

Consistent with the TRS workgroup recommendations, the Commission has also taken into consideration the total number of DFPS-cited deficiencies when reviewing a provider's initial TRS program eligibility. In determining the maximum number of total DFPS-cited deficiencies allowed for participation in the TRS program, the Commission concurs with the recommendations of the TRS workgroup, which consulted with DFPS to determine the average number of DFPS licensing deficiencies per provider cited during a 12-month period. In SFY'13 (September 1, 2012 to August 31, 2013), there were an average of 5.81 deficiencies cited per child care center. The average number of deficiencies did not vary significantly based on the size of the center. The smallest centers--a capacity of less than 50 children--had an average of

6.4 deficiencies, while the largest centers--a capacity of over 300 children--had an average of 6.22 deficiencies. Medium-sized centers--a capacity between 50 and 300 children--had an average of 5.75 deficiencies.

As a result of this analysis, the Commission believes that any provider with 10 or more total licensing deficiencies--well above the state average--has not demonstrated consistent compliance with minimum licensing requirements and should automatically be determined to be ineligible to participate in the TRS program.

Additionally, the TRS workgroup worked closely with DFPS to identify:

- what critical licensing deficiencies preclude a provider from participating in the TRS program; and
- the maximum number of high- or medium-high risk licensing deficiencies that preclude a provider from participating in the TRS program.

New §809.131(a) incorporates the TRS workgroup's recommendation establishing the eligibility requirements for a child care provider to apply to participate in the TRS program. Additionally, new §809.131(a) incorporates public input identifying compliance with Board and Commission standards as a critical factor when determining eligibility for increased reimbursement rates. A child care provider is eligible to apply for TRS certification if the provider has a current agreement to serve Commission-subsidized children and the provider:

- (1) has a permanent (nonexpiring) license or registration from DFPS;
- (2) has at least 12 months of licensing history with DFPS; and is not on:
 - (A) corrective action with a Board pursuant to Subchapter F of this chapter;
 - (B) a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the Texas Labor Code (Enforcement of Texas Unemployment Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of Wages); or
 - (C) corrective or adverse action with DFPS; or
- (3) is regulated by and in good standing with the US Military.

New §809.131(b) incorporates the TRS workgroup's recommendation that a child care facility is not eligible to apply for TRS certification if, during the most recent 12-month DFPS licensing history, the provider had:

- (1) any critical licensing deficiencies, as listed in the TRS guidelines;
- (2) five or more high or medium-high licensing deficiencies, as listed in the TRS guidelines; or
- (3) 10 or more total licensing deficiencies of any type.

Comment:

One commenter addressed the eligibility to apply for the TRS program for providers that have been found in violation of other program rule or non-licensing violations.

Specifically, the commenter asked if the following providers would be eligible to apply for the TRS program; providers under:

- a Board's corrective actions for Child Care Attendance Automation violations;
- recoupment by the Board;
- Internal Revenue Service garnishment; or
- active investigation by the Agency's Office of Investigation.

Response:

The Commission concurs with the commenter's identification of compliance with Board and Commission standards when determining eligibility for the increased TRS reimbursement rates. The Commission has reviewed the comment in light of the statutory preference for services of the highest quality and believes it is important that TRS program providers are in compliance with locally developed Board child care requirements, as well as with state statutes regarding the Commission's enforcement of state unemployment compensation and wage laws in order to be eligible for the increased rates afforded to TRS program providers.

Therefore, the Commission has modified the rule language at §809.131(a) to state that a provider shall not be eligible to apply for the TRS program if the provider:

- is on corrective action with a Board pursuant to Subchapter F of this chapter; or
- is under a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the Texas Labor Code (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of Wages).

As a result of this proposed revision to address initial program eligibility, the Agency notes that maintaining initial eligibility standards is critical not just to DFPS licensing, but also to ensuring that providers seeking a higher rating within the TRS program continue to maintain threshold quality indicators as they seek to increase their rating and, hence, their reimbursement rate. As Boards and the Agency work with providers to improve service quality statewide, standards cannot be improved if initial program eligibility requirements are not consistently maintained throughout program participation. Therefore, consistent with comments identifying compliance with Board and Agency standards as affecting eligibility for increased reimbursement rates, the Agency modifies §809.132 to include these requirements throughout program participation.

The modified language in §809.132 states that a TRS program provider shall lose TRS certification if the provider:

- is placed on corrective action with a Board pursuant to Subchapter F of this chapter;
- is under a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the Texas Labor Code (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of Wages).

Comment:

One commenter requested that the Commission allow nationally accredited providers whose licenses may have changed due to a move, change in ownership, or type of facility to be able to continue to participate as TRS providers as long as their national accreditation remains in place even though they may not have a 12-month licensing history with DFPS with that particular license or permit number as required under §809.131(a)(2).

Response:

The proposed TRS guidelines allow providers with a change of license status due to a move to retain their TRS level for up to three months, pending a full TRS assessment on the TRS standards, to determine the new facility's TRS status. The facility will not be required to have a 12-month licensing history in order to continue for the three months, or to be certified as a TRS provider following the TRS assessment. To ensure consistent application of TRS standards to providers, the Commission agrees that TRS providers that have a change of license status due to a change in ownership should be treated as TRS providers that move. The Commission has made this modification to that provision in §809.133(f). The Commission finds no basis to distinguish the impact upon TRS accreditation of a change in ownership of a nationally accredited provider from that of any provider. Accordingly, the Commission does not concur with the comment's special consideration for only nationally accredited providers.

Secondly, the Commission does not agree that an existing licensing history should necessarily transfer when a facility obtains an entirely new license type. For example, the change from a Registered Home to a Licensed Home or from a Licensed Home to a Licensed Center reflects fundamental changes to the provider's structure, licensing requirements, and operations. Further, the TRS Program Guidelines have completely separate measures based on the provider type. For this reason, the Commission declines to treat a change in license type as a continuation of a provider's licensing history, as in a change in ownership, or a move.

Comment:

One commenter requested that the total number of licensing deficiencies be lowered from the proposed 10 total deficiencies. The commenter noted that if the state average is 5.81 deficiencies per center, TRS providers should be held to a higher standard rather than a lower standard. TRS providers should be below the state average not above it.

Response:

The threshold was carefully considered by the TRS workgroup. The current maximum number of licensing deficiencies allowed to apply for TRS certification is 10 and the Agency agrees with the workgroup recommendation to retain this requirement.

However, §809.131(b) includes a provision that a provider may not have any licensing deficiency that the TRS workgroup, in consultation with DFPS, deems a 'critical' licensing deficiency. Further, the section includes a provision that a provider cannot have five or more of the high or medium-high deficiencies identified by the TRS workgroup, in consultation with DFPS.

The Commission also emphasizes that placing a maximum number of licensing deficiencies on TRS eligibility is a higher standard than that placed on child care licensing. Although child care licensing may place a provider on corrective or adverse action based on a variety of factors, which may include the number and type of licensing deficiencies, there is no specific maximum number of licensing deficiencies that initiates licensing actions.

§809.132. Impact of Certain Deficiencies on TRS Certification

New §809.132 describes the minimum standards necessary for TRS providers to maintain program eligibility and outlines the specific consequences for TRS providers that:

- are placed on corrective action with a Board;
- are under a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the Texas Labor Code (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of Wages);
- are placed on corrective or adverse action by DFPS;
- exceed a maximum number of DFPS child care licensing deficiencies of any type; or
- exceed a maximum number of critical, high, or medium-high DFPS child care licensing deficiencies as listed in the TRS guidelines.

In the development of these minimum standards, the Commission consulted closely with the TRS workgroup and accepted its recommendations.

New §809.132(a) mandates that a TRS provider shall lose TRS certification if the provider:

- (1) is placed on corrective action with a Board pursuant to Subchapter F of this chapter;
- (2) is under a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the Texas Labor Code (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of Wages);
- (3) is placed on corrective or adverse action by DFPS; or
- (4) had 15 or more total licensing deficiencies of any type during the most recent 12-month licensing history.

Under new §809.132(b), a TRS provider with any of the critical licensing deficiencies listed in the TRS guidelines during the most recent 12-month DFPS licensing history shall have the following consequences:

- (1) reduction of a 4-Star Program Provider or 3-Star Program Provider to a 2-Star Program Provider; or
- (2) a 2-Star Program Provider will lose certification.

Likewise, as set forth in new §809.132(c), TRS providers with five or more of the high or medium-high deficiencies listed in the TRS guidelines during the most recent 12-month DFPS licensing history shall lose a star level with a 2-Star Program Provider losing certification.

New §809.132(d) provides that TRS providers with 10 to 14 total licensing deficiencies of any type during the most recent 12-month DFPS licensing history shall be placed on a six-month TRS program probationary period.

Additionally, new §809.132(d)(1) - (3) explains that:

- (1) TRS providers on a six-month probationary period that are re-cited by DFPS for any of the same deficiencies within the probationary period shall lose a star level with a 2-Star Program Provider losing certification;

- (2) if any new deficiencies--not to exceed 14 total deficiencies--are cited by DFPS during the first probationary period, a second six-month probationary period shall be established effective upon the date of final DFPS determination; and
- (3) if any new deficiencies--not to exceed 14 total deficiencies--are cited by DFPS during the second six-month probationary period, the provider shall lose TRS certification.

Under new §809.132(e), providers that lose a star level due to licensing deficiencies shall be eligible for reinstatement at the former level if the deficiency is not re-cited by DFPS within the next six months.

New §809.132(f) explains that providers losing TRS certification will be eligible to reapply for certification no sooner than 12 months following the loss of the certification.

DFPS citations, deficiencies, and actions are effective on the date DFPS makes the final determination following any appeal by the provider to DFPS.

Comment:

One commenter questioned why TRS providers are allowed up to 14 DFPS deficiencies before a TRS provider loses certification. The commenter stated that TRS providers should be held to a higher standard if being paid higher rates.

Response:

The threshold was carefully considered by the TRS workgroup. Currently, there is no maximum number of deficiencies that a TRS-certified provider can have and remain in the TRS program. The workgroup deliberated this and recommended a maximum of 15 and the Agency agrees with this recommendation. The Commission will monitor and analyze this to determine if the number needs to be reduced in the future.

However, §809.132 includes a provision that a TRS provider will lose TRS status if the provider has any licensing deficiency that the TRS workgroup, in consultation with DFPS, deems a 'critical' licensing deficiency.

Comment:

Two commenters stated that the rules regarding the total number of licensing deficiencies place larger providers at a disadvantage due to the higher number of children served, classrooms offered, and staff managed. The commenters recommended that providers be required to receive additional training during the six-month probationary period to assist in corrective actions. If the citations are not repeated during the probationary period a star will not be removed. This probationary period will encourage corrections of the deficiencies while maintaining an economical balance for the TRS provider.

Response:

The Commission disagrees that the rules place larger providers at a disadvantage. As mentioned previously, the TRS workgroup analyzed the average number of deficiencies by facility size and found that larger facilities do not have a greater number of deficiencies. In fact, the data show that the larger centers had slightly fewer deficiencies

on average than the smallest centers. The smallest centers--a capacity of fewer than 50 children--had an average of 6.4 deficiencies. The largest centers--a capacity of over 300 children--had an average of 6.2 deficiencies.

Comment:

Two commenters recommended that a provider is not eligible to apply for TRS certification if the provider has had five or more high licensing deficiencies and remove the medium-high deficiencies from the proposed rules and maintain a focus on critical deficiencies.

Response:

The TRS workgroup, in consultation with DFPS, developed the list of high and medium-high deficiencies referenced in the proposed rule and further delineated in the proposed TRS Program Guidelines. This list took careful consideration of the critical licensing deficiencies (including those classified as medium-high by DFPS) that would preclude a provider from a quality designation.

Comment:

One commenter requested direction on how to handle a TRS provider that voluntarily withdraws from the program prior to the contractor review of the provider's licensing compliance. The commenter asked if the provider must also wait 12 months prior to reapplying for certification as required in §809.132(f).

Response:

The Commission understands the concern that a provider that knows it will lose TRS certification due to licensing deficiencies will "withdraw" from the program in order to potentially shorten the number of months to wait before reapplying for certification. The Commission has modified §809.132(f) to state that providers losing TRS certification shall not be eligible to apply for certification sooner than 12 months following the loss of TRS certification. This provision applies to the loss of TRS certification for any reason, including voluntary withdrawal from the program.

Comment:

One commenter requested clarification on how to account for an appeal between the TRS provider and DFPS licensing if a provider is placed on corrective or adverse action. The commenter asked if TRS status would stay in place if a provider states it is appealing this determination to DFPS.

Response:

Under current Commission policies regarding DFPS licensing actions--as provided in Workforce Development Letter 19-09, issued June 5, 2009, and entitled "Child Care Providers Placed on Corrective or Adverse Action with the Texas Department of Family and Protective Services"--no action should be taken by the Board until DFPS has issued a final determination through the DFPS process, which includes the provider appeal process.

Comment:

One commenter requested that the definition of "critical licensing deficiencies" be added to the rules for clarity and consistency.

Response:

The specific critical licensing deficiencies will be identified in the TRS standards and are defined by DFPS regulations. As these regulations may be amended by DFPS, independent of Commission rule, the Commission believes that the deficiencies are better placed in the TRS Program Guidelines in order to allow more flexibility to adjust the guidelines if necessary.

Comment:

Regarding the reduction of a star level due to licensing deficiencies, one commenter asked if reinstatement of a former star level in §809.132(e) occurs with only a review of the licensing history or if an on-site visit is also required.

Response:

The rule language states that if the loss of the star level is due to licensing violations, then reinstatement shall occur if the deficiency is not re-cited by DFPS within the next six months. The rule language does not require an on-site visit by the TRS program in order to reinstate at the former star level if the star was lost due to licensing violations. Because the loss of the star level was solely due to licensing deficiencies, the star level shall be reinstated once those deficiencies are corrected and verified as corrected by a subsequent DFPS monitoring visit.

§809.133. Application and Assessments for the TRS Program

New §809.133 sets forth the rules for applying for the TRS program:

- conducting assessments, including:
 - initial assessments for TRS program applicants; and
 - recertification assessments for TRS-certified providers; and
- ongoing monitoring of TRS providers.

As recommended by the TRS workgroup, new §809.133(a)(1) requires TRS program applicants to complete an orientation on TRS guidelines, including an overview of the:

- (A) TRS program application process;
- (B) TRS program measures; and
- (C) TRS program assessment process.

New §809.133(a)(2) incorporates the TRS workgroup's recommendations requiring an applicant to complete a TRS program self-assessment tool.

New §809.133(b) states that Boards must ensure that:

- (1) written acknowledgment of receipt of the application and self-assessment is sent to the provider;
- (2) within 20 days of receipt of the application, the provider receives an estimated time frame for scheduling the initial assessment;

- (3) an assessment is conducted of any child care provider that meets the eligibility requirements in new §809.131 and requests to participate in the TRS program; and
- (4) TRS certification is granted to any provider assessed as meeting the TRS provider certification criteria set forth in the TRS guidelines.

New §809.133(c) incorporates the TRS workgroup's recommendations requiring Boards to ensure that TRS assessments include:

- (1) on-site assessment of 100 percent of provider classrooms at the initial assessment for TRS certification and at each scheduled recertification; and
- (2) recertification of all TRS providers every three years.

New §809.133(d) incorporates the TRS workgroup's recommendations requiring Boards to ensure that certified TRS providers are monitored on an annual basis and the monitoring includes:

- (1) at least one unannounced on-site visit; and
- (2) a review of the provider's licensing compliance as described in new §809.132.

New §809.133(e) requires Boards to ensure compliance with the process and procedures in the TRS guidelines for conducting assessments of nationally accredited child care facilities and facilities regulated by the US Military.

New §809.133(f) requires Boards to ensure compliance with the process and procedures in the TRS guidelines for conducting assessments of certified TRS providers that have a change of ownership, move, or expand locations. As mentioned previously, based on public comment, §809.133(f) has been modified to include a change of ownership.

Comment:

One commenter asked if an e-mail would suffice as written acknowledgement of receipt of the application as required in §809.133(b)(1).

Response:

An e-mail is considered as sufficient written acknowledgement of receipt of the application.

Comment:

One commenter asked if the Agency will be providing a standardized monitoring instrument so there is uniformity among the workforce areas for annual monitoring. Further, the commenter asked if minimum attributes should be reviewed in order to comply with the Agency's requirement for an annual monitoring besides an on-site visit and review of licensing history.

Response:

The Agency is working closely with CLI to develop uniform and standard training and tools for assessing and monitoring providers.

§809.134. Minimum Qualifications for TRS Assessors and Mentors

Section 2308.321(e)(2) of the Texas Government Code requires the TRS workgroup to submit recommendations to the Agency proposing revisions to Agency rules relating to the education and experience requirements for mentors and evaluators.

New §809.134(a)(1) - (3) incorporates the TRS workgroup's recommendations, requiring Boards to ensure TRS assessors and mentors meet the minimum education requirements, as follows:

- (1) Bachelor's degree from an accredited four-year college or university in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science;
- (2) Bachelor's degree from an accredited four-year college or university with at least 18 credit hours in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with at least 12 credit hours in child development; or
- (3) Associate's degree in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with two years of experience as a director in an early childhood program, with preference given to experience with a provider that is accredited or TRS certified.

New §809.134(b) incorporates the TRS workgroup's recommendation that a Board may request a waiver from the Commission of the minimum education requirements in subsection (a) if the Board can demonstrate that no applicants in its local workforce development area meet the minimum education requirements.

The rule language also stipulates that a waiver, if granted by the Commission, is effective for no more than two years. The Commission's expectation is that assessors and mentors obtain the required education during the two-year period.

New §809.134(c) incorporates the TRS workgroup's recommendation requiring Boards to ensure that TRS assessors and mentors meet the minimum work experience requirements of one year of full-time early childhood classroom experience in a child care, Early Head Start, Head Start, or prekindergarten through third-grade school program.

New §809.134(d) incorporates the TRS workgroup's recommendation requiring Boards to ensure that if an individual performs the duties of both an assessor and a mentor, the individual providing TRS mentoring services to a provider does not act as the assessor of that same provider when determining TRS certification.

New §809.134(e) incorporates the TRS workgroup's recommendation requiring TRS assessors and mentors to complete annual professional development and continuing education consistent with child care licensing minimum training requirements for a center director.

New §809.134(f) incorporates the TRS workgroup's recommendation requiring TRS assessors and mentors to meet the background check requirement consistent with 40 TAC, Chapter 745.

New §809.134(g) incorporates the TRS workgroup's recommendation requiring TRS assessors and mentors to demonstrate:

- (1) knowledge of best practices in early childhood education; and
- (2) understanding of early childhood evaluations, observations, and assessment tools for both teachers and children.

Comment:

Two commenters expressed support for the minimum qualifications for TRS assessors and mentors.

Comment:

One commenter requested clarification regarding apparent inconsistencies between language regarding education waiver in current Agency policies and language in the rules. The commenter stated that WD Letter 13-14, Attachment 1, states that a Board can request a waiver from the Commission of the minimum education requirements if the Board can demonstrate that no applicants in its workforce area meet the minimum education requirements. However, the rules state that the Commission may grant a waiver of no more than two years of the minimum education requirements if a Board can demonstrate that no applicants in its workforce area meet the minimum education requirements.

Response:

The rule language does include a waiver of the education requirements. However, the rule language restricts the waiver to no more than two years. Upon adoption of the proposed rules, the rule language will supersede the language in WD Letter 13-14, Attachment 1.

Comment:

One commenter stated that a waiver should be allowed for work experience, along with the rule language allowing a waiver from the education requirements.

Response:

The TRS workgroup received significant input from child care providers on this issue. The providers consistently insisted that assessors and mentors must have work experience in a child care facility. This experience assists the assessors and mentors in understanding the day-to-day challenges faced by child care providers, which assists in providing meaningful assistance and reliable assessments of the operations.

Comment:

One commenter recommended adding, "or a closely related field" to the education requirements to accommodate other degrees related to childhood education, including faith-based degrees.

Response:

The TRS workgroup evaluated including language regarding a closely related field. The workgroup specifically reviewed the definition of "closely related coursework" in DFPS

licensing standards (19 TAC §746.1027) and carefully matched those to standard degrees. The degrees listed in the rule language incorporate the closely related coursework in licensing standards.

§809.135. TRS Process for Reconsideration

New §809.135 requires Boards to ensure a process for reconsideration of facility assessment at the Board level. The TRS program is not subject to Chapter 823 of this title, the Integrated Complaints, Hearings, and Appeals rules.

Comment:

One commenter requested clarification on the Commission's expectation for the reconsideration. The commenter stated that since Board staff may not meet the minimum requirements set forth in §809.134, Board staff may not be qualified to review this documentation for reconsideration.

Response:

There is no requirement that the reconsideration be conducted by Board staff. The reconsideration process may include scheduling a second assessment with the same assessor or a second visit with two assessors, or with a different assessor. The reconsideration may also involve a reassessment of a particular measure as requested by the provider. Further, the Board should consider coordination with other Board assessors for a second review of the provider. Additionally, in responding to the reconsideration request from the provider, the Board may make additional mentoring services available to the provider to assist the provider in meeting TRS standards.

Comment:

One commenter asked if a Board may issue policies regarding informal review process, inclusive of time limitations for submission of review, the elements eligible for informal review, and the number of times a provider may request an informal review within a one-year period.

Response:

The rule language requires Boards to ensure there is a process for reconsideration. This process may include all of these elements mentioned by the commenter.

Miscellaneous Comments:

Comment:

One commenter stated that the reimbursement rates for providers are too low.

Response:

The Boards determine the reimbursement rates based on a variety of factors, including the local market rates, the amount of the child care allocation, and the number of children to be served. The Agency has established a methodology for setting Board performance targets that allow a majority of Boards to increase rates. During the most recent fiscal year, 18 of the 28 Boards increased maximum rates.

The Agency regularly analyzes Board reimbursement rates and the percentage of child care centers in the state that accept subsidies. In FY'14, 60 percent of all licensed child care centers in the state agreed to provide child care services to Agency-funded children. The Agency will continue to analyze this data to ensure that the reimbursement rates are sufficient to provide parents with a choice of providers.

Additionally, the minimum percentage rate increase for TRS providers is established by state statute. However, these rules allow Boards to set TRS rates above the statutory minimums. Increasing the number of providers who meet TRS quality standards, along with increased reimbursement rates for TRS, will increase the overall rates paid to child care providers in the state.

Comment:

One commenter stated that due to the significant changes to the TRS program based on the new rules and guidelines, many 4-Star Program Providers may not continue to be 4-star and would drop to a 2-star level. The commenter expressed that this would cause confusion in the TRS program and suggested that this confusion could be mitigated if the changes are implemented under a new and different program name.

Response:

Texas Government Code §2308.3155(a) establishes the Texas Rising Star Program. Therefore, the name of the program cannot be changed.

Comment:

One commenter requested clarification on the criteria for the director of formal education and requested that the criteria take into consideration directors' work experience.

Response:

This is a comment regarding the TRS guidelines and it is not covered by the rule language. However, this issue will be addressed in the responses to the TRS Program Guidelines.

COMMENTS WERE RECEIVED FROM:

Susan Ashmore, Alamo Workforce Development Board

Sally Avila

Luis Bodden, Director, Quality Management, Lower Rio Grande Valley

Andrea Brauer, Early Education Policy Associate, Texans Care for Children

Debbie Carrell, Owner/Director, This Little Light Learning Center

Cris Garza, Managing Director, Lower Rio Contractor C-2 Global

Tere Holmes

Shannon D. Richter, Contract Manager, Workforce Solutions Rural Capital Area

Elisa Shepherd, Government Relations Manager, Knowledge Universe-US

Joyce Sneed, Child Care Contract Manager, Concho Valley Workforce Development Board

Sherry L. Trebus, Child Care Policy and Quality Assurance Manager, Workforce Solutions of Central Texas

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, and Texas Human Resources Code §44.002, regarding Administrative Rules.

The adopted rules affect Texas Labor Code, Title 4, particularly Chapters 301 and 302, as well as Texas Government Code, Chapter 2308.

CHAPTER 809. CHILD CARE SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

§809.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Attending a job training or educational program--An individual is considered to be attending a job training or educational program if the individual:
 - (A) is considered by the program to be officially enrolled;
 - (B) meets all attendance requirements established by the program; and
 - (C) is making progress toward successful completion of the program as determined by the Board.
- (2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.
- (3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and reimbursement process related to child care subsidies, as well as contractors involved in the funding of quality improvement activities as described in §809.16.
- (4) Child care services--Child care subsidies and quality improvement activities funded by the Commission.
- (5) Child care subsidies--Commission-funded child care reimbursements to an eligible child care provider for the direct care of an eligible child.
- (6) Child with disabilities--A child who is mentally or physically incapable of performing routine activities of daily living within the child's typical chronological range of development. A child is considered mentally or physically incapable of performing routine activities of daily living if the child requires assistance in performing tasks (major life activity) that are within the typical chronological range of development, including but not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, breathing; learning; and working.
- (7) Educational program--A program that leads to:

- (A) a high school diploma;
 - (B) a General Educational Development (GED) credential; or
 - (C) a postsecondary degree from an institution of higher education.
- (8) Family--The unit composed of a child eligible to receive child care services, the parents of that child, and household dependents.
- (9) Household dependent--An individual living in the household who is one of the following:
- (A) An adult considered as a dependent of the parent for income tax purposes;
 - (B) A child of a teen parent; or
 - (C) A child or other minor living in the household who is the responsibility of the parent.
- (10) Improper payments--Payments to a provider or Board's child care contractor for goods or services that are not in compliance with federal or state requirements or applicable contracts.
- (11) Job training program--A program that provides training or instruction leading to:
- (A) basic literacy;
 - (B) English proficiency;
 - (C) an occupational or professional certification or license; or
 - (D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.
- (12) Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, the Texas Department of Family and Protective Services (DFPS) pursuant to Texas Human Resources Code §42.052(c).
- (13) Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.

- (14) Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.
- (15) Protective services--Services provided when:
- (A) a child is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without DFPS Child Protective Services (CPS) intervention;
 - (B) a child is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or
 - (C) a child has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.
- (16) Provider--A provider is defined as:
- (A) a regulated child care provider as defined in §809.2(17);
 - (B) a relative child care provider as defined in §809.2(18); or
 - (C) a listed family home as defined in §809.2(12), subject to the requirements in §809.91(b).
- (17) Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:
- (A) licensed by DFPS;
 - (B) registered with DFPS;
 - (C) licensed by the Texas Department of State Health Services as a youth day camp; or
 - (D) operated and monitored by the United States military services.
- (18) Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, one of the following:
- (A) The child's grandparent;
 - (B) The child's great-grandparent;

- (C) The child's aunt;
 - (D) The child's uncle; or
 - (E) The child's sibling (if the sibling does not reside in the same household as the eligible child).
- (19) Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when the child is living with and physically present with the parent during the time period for which child care services are being requested or received.
- (20) Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.
- (21) Texas Rising Star program--A voluntary, quality-based rating system of child care providers participating in Commission-subsidized child care.
- (22) Texas Rising Star Provider--A provider certified as meeting the TRS program standards. TRS providers are certified as one of the following:
- (A) 2-Star Program Provider;
 - (B) 3-Star Program Provider; or
 - (C) 4-Star Program Provider.
- (23)~~(24)~~ Working--Working is defined as:
- (A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions;
 - (B) job search activities (subject to the requirements in §809.41(d)); or
 - (C) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities.

SUBCHAPTER B. GENERAL MANAGEMENT

§809.16. Quality Improvement Activities.

- (a) Child care funds allocated by the Commission pursuant to its allocation rules (generally, Chapter 800, General Administration, Subchapter B, Allocation and Funding, and specifically §800.58, Child Care), including local public transferred funds and local private donated funds, as provided in §809.17, to the extent they are

used for nondirect care quality improvement activities, may be expended on any quality improvement activity described in 45 CFR §98.51. These activities may include, but are not limited to:

- (1) activities designed to provide comprehensive consumer education to parents and the public;
 - (2) activities that increase parental choice; and
 - (3) activities designed to improve the quality and availability of child care.
- (b) Boards must ensure compliance with 45 CFR §98.54(b) regarding construction expenditures, as follows:
- (1) State and local agencies and nonsectarian agencies or organizations.
 - (A) Funds shall not be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement of any building or facility.
 - (B) Funds may be expended for minor remodeling, and for upgrading child care facilities to ensure that providers meet state and local child care standards, including applicable health and safety requirements.
 - (2) Sectarian agencies or organizations.
 - (A) The prohibitions in paragraph (1) of this subsection apply.
 - (B) Funds may be expended for minor remodeling only if necessary to bring the facility into compliance with the health and safety requirements established pursuant to 45 CFR §98.41.
- (c) Expenditures certified by a public entity, as provided in §809.17(b)(3), may include expenditures for any quality improvement activity described in 45 CFR §98.51.
- ~~(d) Boards shall ensure that an assessment is conducted for any provider requesting TRS Provider certification pursuant to Texas Government Code §2308.316. Prior to conducting the assessment, Boards shall ensure that the provider has a current agreement to serve Commission-funded children; and~~
- ~~(1) has the appropriate permanent license or registration from, and is not on corrective or adverse action with, DFPS; or~~
 - ~~(2) is regulated by the military.~~

~~(e) Boards shall ensure that TRS Provider certification is granted for any provider that is assessed and verified as meeting the TRS Provider certification criteria.~~

§809.20. Maximum Provider Reimbursement Rates.

- (a) Based on local factors, including a market rate survey provided by the Commission, a Board shall establish maximum reimbursement rates for child care subsidies to ensure that the rates provide equal access to child care in the local market and in a manner consistent with state and federal statutes and regulations governing child care. At a minimum, Boards shall establish reimbursement rates for full-day and part-day units of service, as described in §809.93(e), for the following:
 - (1) Provider types:
 - (A) Licensed child care centers, including before- or after-school programs and school-age programs, as defined by DFPS;
 - (B) Licensed child care homes as defined by DFPS;
 - (C) Registered child care homes as defined by DFPS; and
 - (D) Relative child care providers as defined in §809.2.
 - (2) Age groups in each provider type:
 - (A) Infants age 0 to 17 months;
 - (B) Toddlers age 18 to 35 months;
 - (C) Preschool age children from 36 to 71 months; and
 - (D) School age children 72 months and over.
- (b) A Board shall establish enhanced reimbursement rates:
 - (1) for all age groups at ~~child care providers that obtain TRS P~~provider [facilities](#) ~~criteria pursuant to Texas Government Code §2308.315;~~
 - (2) only for preschool-age children at child care providers that obtain school readiness certification pursuant to Texas Education Code §29.161; and
 - (3) only for preschool-age children at child care providers that participate in integrated school readiness models pursuant to Texas Education Code §29.160.
- (c) The minimum [enhanced](#) reimbursement rates established under subsection (b) of this section shall be ~~at least 5%~~ greater than the maximum rate established for providers

not meeting the requirements of subsection (b) of this section for the same category of care up to, but not to exceed, the provider's published rate. Effective September 1, 2015, the maximum rate must be at least:

(1) 5 percent greater for a:

(A) 2-Star Program Provider; or

(B) child care provider meeting the requirements of subsections (b)(2) or (b)(3) of this section;

(2) 7 percent greater for a 3-Star Program Provider; and

(3) 9 percent greater for a 4-Star Program Provider.

(d) Boards may establish a higher enhanced reimbursement rate than those specified in subsection (c) of this section for TRS providers, as long as there is a minimum 2 percent difference between each star level.

(e)(d) A Board or its child care contractor shall ensure that providers that are reimbursed for additional staff or equipment needed to assist in the care of a child with disabilities are paid a rate up to 190% ~~percent~~ of the provider's reimbursement rate for a child of that same age. The higher rate shall take into consideration the estimated cost of the additional staff or equipment needed by a child with disabilities. The Board shall ensure that a professional, who is familiar with assessing the needs of children with disabilities, certifies the need for the higher reimbursement rate described in this subsection.

(f)(e) The Board shall determine whether to reimburse providers that offer transportation as long as the combined total of the provider's published rate, plus the transportation rate, is subject to the maximum reimbursement rate established in subsection (a) of this section.

SUBCHAPTER G. TEXAS RISING STAR PROGRAM

§809.130. Short Title and Purpose.

(a) The rules contained in this subchapter may be cited as the TRS Program rules.

(b) The purpose of the TRS Program rules is to interpret and implement Texas Government Code §2308.3155(b) requiring the Commission to establish rules to administer the TRS program, including guidelines for rating a child care provider for TRS certification.

(c) The TRS Program rules identify the organizational structure and categories of, and the scoring factors that shall be included in, the TRS guidelines.

(d) The TRS guidelines for rating a child care provider shall:

(1) describe measures for the TRS program that contain, at a minimum, measures for child care providers regarding:

(A) director and staff qualifications and training;

(B) caregiver-child interactions;

(C) curriculum;

(D) nutrition and indoor and outdoor activities; and

(E) parent involvement and education;

(2) specify measures that:

(A) must be met in order for a provider to be certified at each star level; and

(B) are observed and have points awarded through on-site assessments; and

(3) specify the scoring methodology and scoring thresholds for each star level.

(e) The TRS guidelines:

(1) shall be adopted by the Commission subject to the requirements of the Texas Open Meetings Act; and

(2) may be amended by the Commission, provided that the amendments are adopted subject to the requirements of the Texas Open Meetings Act.

§809.131. Eligibility for the TRS Program.

(a) A child care provider is eligible to apply for the TRS program if the provider has a current agreement to serve Commission-subsidized children and:

(1) has a permanent (nonexpiring) license or registration from DFPS;

(2) has at least 12 months of licensing history with DFPS; and is not on:

(A) ~~(3) is not on~~ corrective ~~or adverse~~ action with ~~DFPS~~ a Board pursuant to Subchapter F of this chapter; ~~or~~

(B) a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the Texas Labor Code (Enforcement of the Texas Unemployment

Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of Wages); or

(C) ~~is not on~~ corrective or adverse action with DFPS; or

~~(4)~~ (3) is regulated by and in good standing with the US Military.

(b) A child care facility is not eligible to apply for the TRS program if, during the most recent 12-month DFPS licensing history, the provider had:

(1) any of the critical licensing deficiencies listed in the TRS guidelines;

(2) five or more of the high or medium-high licensing deficiencies listed in the TRS guidelines; or

(3) 10 or more total licensing deficiencies of any type.

§809.132. Impact of ~~DFPS Deficiencies~~ Certain Deficiencies on TRS Certification.

(a) A TRS provider shall lose TRS certification if the provider:

(1) is placed on corrective ~~or adverse~~ action ~~by DFPS~~ with a Board pursuant to Subchapter F of this chapter; ~~or~~

(2) is under a "Notice of Freeze" with the Commission pursuant to Chapter 213 of the Texas Labor Code (Enforcement of the Texas Unemployment Compensation Act) or Chapter 61 of the Texas Labor Code (Payment of Wages);

(3) is placed on corrective or adverse action by DFPS; or

(4) ~~(2)~~ had 15 or more total licensing deficiencies of any type during the most recent 12-month licensing history.

(b) TRS providers with any of the critical licensing deficiencies listed in the TRS guidelines during the most recent 12-month DFPS licensing history shall have the following consequences:

(1) reduction of a 4-Star Program Provider or 3-Star Program Provider to a 2-Star Program Provider; or

(2) a 2-Star Program Provider shall lose certification.

(c) TRS providers with five or more of the high or medium-high deficiencies listed in the TRS guidelines during the most recent 12-month DFPS licensing history shall lose a star level with a 2-Star Program Provider losing certification.

- (d) TRS providers with 10 to 14 total licensing deficiencies of any type during the most recent 12-month DFPS licensing history shall be placed on a six-month TRS program probationary period. Further:
- (1) TRS providers on a six-month probationary period that are re-cited by DFPS within the probationary period for any of the same deficiencies shall lose a star level with a 2-Star Program Provider losing certification;
 - (2) if any new deficiencies--not to exceed 14 total deficiencies--are cited by DFPS during the first probationary period, a second six-month probationary period shall be established effective upon the date of final DFPS determination of the deficiencies; and
 - (3) if any new deficiencies--not to exceed 14 total deficiencies--are cited by DFPS during the second six-month probationary period, a provider shall lose TRS certification.
- (e) Providers losing a star level due to licensing deficiencies shall be reinstated at the former star level if the deficiency is not re-cited by DFPS within the next six months.
- (f) Providers losing TRS certification **due to licensing deficiencies** shall not be eligible to reapply for certification sooner than 12 months following the loss of the certification.

§809.133. Application and Assessments for the TRS Program.

- (a) TRS program applicants must complete:
- (1) an orientation on the TRS guidelines, including an overview of the:
 - (A) TRS program application process;
 - (B) TRS program measures; and
 - (C) TRS program assessment process; and
 - (2) a TRS program self-assessment tool.
- (b) Boards shall ensure that:
- (1) written acknowledgment of receipt of the application and self-assessment is sent to the provider;
 - (2) within 20 days of receipt of the application, the provider is sent an estimated time frame for scheduling the initial assessment;

- (3) an assessment is conducted for any provider that meets the eligibility requirements in §809.131 and requests to participate in the TRS program; and
 - (4) TRS certification is granted for any provider that is assessed and verified as meeting the TRS provider certification criteria set forth in the TRS guidelines.
- (c) Boards shall ensure that TRS assessments are conducted as follows:
 - (1) On-site assessment of 100 percent of the provider classrooms at the initial assessment for TRS certification and at each scheduled recertification; and
 - (2) Recertification of all TRS providers every three years.
- (d) Boards shall ensure that certified TRS providers are monitored on an annual basis and the monitoring includes:
 - (1) at least one unannounced on-site visit; and
 - (2) a review of the provider's licensing compliance as described in new §809.132.
- (e) Boards shall ensure compliance with the process and procedures in the TRS guidelines for conducting assessments of nationally accredited child care facilities and child care facilities regulated by the US Military.
- (f) Boards shall ensure compliance with the process and procedures in the TRS guidelines for conducting assessments of certified TRS providers that **have a change of ownership**, move, or expand locations.

§809.134. Minimum Qualifications for TRS Assessors and Mentors.

- (a) Boards shall ensure that TRS assessors and mentors meet the minimum education requirements as follows:
 - (1) Bachelor's degree from an accredited four-year college or university in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science;
 - (2) Bachelor's degree from an accredited four-year college or university with at least 18 credit hours in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with at least 12 credit hours in child development; or
 - (3) Associate's degree in early childhood education, child development, special education, child psychology, educational psychology, elementary education, or family consumer science with two years of experience as a director in an early

childhood program, with preference given to experience with a provider that is accredited or TRS certified.

- (b) The Commission may grant a waiver of no more than two years of the minimum education requirements in subsection (a) if a Board can demonstrate that no applicants in its local workforce development area meet the minimum education requirements.
- (c) Boards shall ensure that TRS assessors and mentors meet the minimum work experience requirements of one year of full-time early childhood classroom experience in a child care, Early Head Start, Head Start, or prekindergarten through third-grade school program.
- (d) Boards shall ensure that if an individual performs the duties of both an assessor and a mentor, the individual providing TRS mentoring services to a provider does not act as the assessor of that same provider when determining TRS certification.
- (e) Boards shall ensure that TRS assessors and mentors are required to complete annual professional development and continuing education consistent with child care licensing minimum training requirements for a center director.
- (f) Boards shall ensure that TRS assessors and mentors meet the background check requirement consistent with 40 TAC, Chapter 745.
- (g) Boards shall ensure that TRS assessors and mentors demonstrate:

 - (1) knowledge of best practices in early childhood education; and
 - (2) understanding of early childhood evaluations, observations, and assessment tools for both teachers and children.

§809.135. TRS Process for Reconsideration.

Boards shall ensure a process for reconsideration of facility assessment at the Board level for the TRS program. The TRS program is not subject to Chapter 823 of this title, the Integrated Complaints, Hearings, and Appeals rules.